

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GROUND ROUND INDEPENDENT OWNERS
COOPERATIVE, LLC,

DEFAULT JUDGMENT and
PERMANENT INJUNCTION

Plaintiff,

v.

Case # 15-CV-6046-FPG

JIM'S GROUND ROUND, INC. and
JAMES NUCELLI,

Defendants.

Plaintiff Ground Round Independent Owners Cooperative, LLC (“Plaintiff”) has moved this Court for Default Judgment pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure against Defendants Jim’s Ground Round, Inc. and James Nucelli (collectively “Defendants”) by Notice of Motion and supporting documents filed on July 23, 2015. ECF No.

6. On July 31, 2015, this Court ordered the Defendants to file any response to the Motion for Default Judgment by August 14, 2015, and a copy of that Order was mailed by the Court to both Defendants at 1205 Spencerport Road, Rochester, NY 14606. ECF No. 7. The Defendants have not responded to the Motion, nor have they contacted the Court in any fashion.

After reviewing all of the filings in this case to date, the Court finds that the Plaintiff is the owner of the following federally registered trademarks:

- a. Reg. No. 3866900, issued by the United States Patent and Trademark Office on October 26, 2010, for a service mark that consists of the phrase, “Ground Round” in stylized dark green font with red shadowing superimposed over a gold incomplete oval design with gray shadowing. In the upper right of the oval is the wording “EST. 1969” in black, and beneath the wording “Ground Round,” is the wording “Grill & Bar.”
- b. Reg. No. 4100231, issued by the United States Patent and Trademark Office on February 14, 2012, for a service mark consisting of the wording, “GROUND ROUND” in fanciful script with concentric circles, and with the terms “SPORTS GRILLE” centered below the “GROUND ROUND” wording.

- c. Reg. No. 927498, issued by the United States Patent and Trademark Office on January 18, 1972, for a service mark consisting of the wording “The Ground Round” in fanciful script embedded in a shaded circle.
- d. Reg. No. 2621535, issued by the United States Patent and Trademark Office on September 17, 2002, for a service mark consisting of the wording “GROUND ROUND,” embedding in concentric circles. In the top border of the circle is the wording, “EST. 1969” and in the bottom, the wording “GRILL & BAR.”
- e. Reg. No. 2635442, issued by the United States Patent and Trademark Office on October 15, 2002, for a service mark consisting of the wording “GROUND ROUND GRILL & BAR.”

These trademarks are collectively referred to herein as “Plaintiff’s Trademarks”; and

The Clerk having entered Default against the Defendants on April 24, 2015 (ECF No. 5), and this Court having further found that Defendants are in default by reason of their failure to answer or otherwise appear in this action despite having been duly served, and the Court having determined that the Complaint’s allegations, taken as true, establish Plaintiff’s right to the relief requested, it is hereby

ORDERED, that Plaintiff’s Motion for Default Judgment (ECF No. 6) against Defendants is hereby GRANTED in all respects; and it is further

ORDERED, that Defendants, their members, officers, directors, agents, servants, employees, and all others acting on their behalf, or in their stead, or in concert therewith, are hereby permanently enjoined and restrained from any further acts of trade name infringement and unfair competition, and more particularly, from in any manner, directly or indirectly, using the “Ground Round” trademark or any mark that is a copy, simulation, or confusingly similar to Plaintiff’s Trademarks, including without limitation “Jim’s Ground Round”; and it is further

ORDERED, that Defendants and all those acting in concert therewith are hereby directed to immediately deliver up for destruction all products and all promotional materials and/or

advertising materials of any kind bearing the “Ground Round” mark and any other marks which are confusingly similar to, or marks that are dilutive to, or otherwise violate Plaintiff’s Trademarks including without limitation “Jim’s Ground Round”; and it further

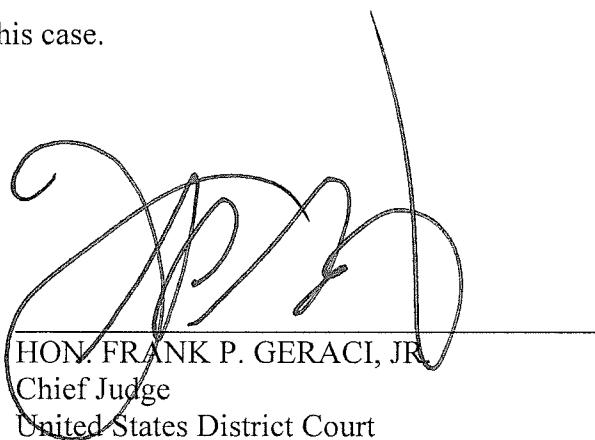
ORDERED, that Defendants and all those acting in concert therewith are directed to immediately cancel, discontinue using and/or otherwise forfeit Defendants’ Facebook page and any other online sites that they control and that use Plaintiff’s Trademarks or any other marks which are confusingly similar to, or marks that are dilutive to, or otherwise violate Plaintiff’s Trademarks including without limitation “Jim’s Ground Round”; and it is further

ORDERED, ADJUDGED, AND DECREED, that based upon their default in this action, the Defendants are deemed to have willfully infringed the Plaintiff’s trademarks. *See, e. g., Gucci America, Inc. v. MyreplicaHandbag.com*, No. 07 Civ. 2438(JGK), 2008 WL 512789, at *3 (S.D.N.Y. Feb. 26, 2008) (“When a defendant has defaulted, then by virtue of its default it is deemed to be a willful infringer.”). As a result, they are liable to Plaintiff for its attorney’s fees and costs incurred in this action in the amount \$12,018.34, which amount is supported by contemporaneous time records and billing summaries attached to the Plaintiff’s Motion for Default Judgment, and Plaintiff shall have judgment against Defendants, jointly and severally in that amount, and Plaintiff shall have execution therefore.

The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: Rochester, New York
September 8, 2015



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court